IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4698 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOGHABHAI @ MAHESHBHAI MORARJIBHAI VASHI - Appellant(s)
Versus
AYUBBHAI ADAMBAHI BHAYA & 2 - Defendant(s)

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Appearance :

MR ZUBIN F BHARDA for Appellant(s) : 1,
RULE UNSERVED for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,
MR ADIL R MIRZA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/02/2007

ORAL JUDGMENT :

The appellant has made a limited grievance in this appeal that without any justification the Motor Accident Claims Tribunal, Valsad at

Navsari, has held him contributory negligent to the extent of 25% in the judgment and award made in M.A.C. Petition No. 349 of 1990 dated 22/6/2000. The appellant was going to his residence from his place of employment i.e., mill, on a scooter. When he approached Vesma Cross Roads on National Highway No. 8, according to him, the driver of truck bearing Registration No. GJ-5-T-680 knocked him down and as a result of the same, he received injuries. He has averred that the truck was driven at an excessive speed and in rash and negligent manner by driver i.e., original opponent no. 1. He had sustained fracture as well as injuries on other parts of the body. He, therefore, claimed Rs.50,000/- by way of compensation. The Insurance Company – respondent no. 3 herein contested the claim by filing written statement at Exh. 27. It denied the averments made in the petition.

2. On the basis of the material produced before it, the Tribunal held that it was opponent no. 1 – the driver, who is deleted from this proceedings, caused the accident and the resultant injuries due to his rash and negligent act. The Tribunal also held that the appellant was entitled to receive Rs.30,000/- by way of compensation against his claim of Rs.50,000/-, together with interest @ 9% p.a., from the date of application till realization. The date of the judgment and award of the Motor Accident Claims Tribunal, Valsad at Navsari is 22/6/2000.

3. Mr. Jubin Bharda, learned advocate for the appellant has

submitted that without any evidence on record, the Tribunal has directed that 25% of the amount from the compensation be deducted. He has drawn my attention to the evidence of the appellant which is at Exh. 33 to substantiate his submission.

3.1. As against that, Mr. Adil Mirza, learned advocate for respondent no. 3 has supported the judgment and has submitted that the reasoning of the Tribunal is proper and it is not required to be disturbed. He has not challenged the quantum.

4. The evidence of appellant shows that he was driving his vehicle in a careful manner and on seeing the truck, he had applied the brake. However, on the turning of the Vesma Cross Roads, the offending vehicle collided with his vehicle resulting into serious injuries to him. In the cross-examination he has stated that he was not driving the vehicle on wrong side. He has further stated that he has applied the brake on the turning and he was facing his correct side. No evidence has been led by the respondents. In view of the same, the evidence of appellant has remained uncontroverted. It may be noted here that the Tribunal has not assigned any reason why it has come to the conclusion that the appellant was driving the vehicle in negligent manner so as to hold him guilty of committing negligence to the extent of 25%. On the contrary, while answering the issues the Tribunal has answered the issue with regard to negligence against original opponent no. 1, the driver. In these circumstances, I find that there is no justification for the Tribunal to give

direction to deduct 25% from the award amount. Hence, that direction is quashed and set aside. The respondents will satisfy the entire award together with interest and costs as awarded by the Tribunal. The appeal is allowed.

Registry is directed to retransmit R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.